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This paper provides Minnesota school administrators with a guide for dealing with student expulsion, primarily those cases resulting from discipline problems. Under law, only a board of education can expel a pupil. The two general areas in which expulsion may be justified are offenses committed on school property during school hours, and offenses committed by pupils outside the school's jurisdiction which tend to bring contempt or ridicule upon the school or disrupt its usual routine. Specific behaviors discussed included membership in secret societies, immorality, smoking, marriage of students, and pregnancies. (KP)

PUPIL EXPULSION

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of
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By
Ralph R. Doty

February, 1968

Duluth, Minnesota

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PREFACE

This paper is a result of Mr. Ralph R. Doty's interest in the legal rights and responsibilities of both school officials and pupils. The dissemination of this paper by the Educational Research and Development Council of Northeast Minnesota (RAND) is a result of the expressed interests of schoolmen in the Council area in receiving treatments of a number of crucial issues, and specifically that of pupil expulsion.

While at the philosophical and cerebral level virtually all school officials view pupil expulsion as a most onerous thing, a glaring example of the school's failure, and an admission of incapacity to provide for a given youngster in a given situation, all realize that in the practical order occasions can arise, and certainly do arise, which suggest that the most appropriate action is expulsion by the board of education. The attitude that the seriousness of the action and the "last resort" overtones of such action are reasons enough for expulsion are not uniformly honored when challenged in Court. Minnesota Statutes provide no real guidelines to the school administrator or the board. The rules, then, are made in the Courts, or in the reflection of previous court action found in the opinion of attorneys general. Mr. Doty's paper surveys the current rules of law in a number of critical areas and offers, thereby, a number of important guidelines to school officials. It is expected that school administrators in particular will find this document useful for their own deliberations and in advising their boards of education.

Ralph R. Doty is currently in an administrative internship program as an administrative assistant to Farley D. Bright, Assistant Commissioner of

Education, State of Minnesota. This paper, of course, in no sense represents an official view of the Department or any other agency of state government.

It is hoped that this document, and in the future others of a similar nature in this or other concerns, disseminated by RAND will be helpful to all school personnel.

February, 1968

Karl J. Vander Horck
Project Director
Supplementary Services Center

INTRODUCTORY STATEMENT

A persistent transfer of responsibilities once assumed by the home and other social institutions to the public school has faced educators with a need to consider a broad range of human action by children and young adults. This has resulted in pronounced tendency on the part of educators, acting in loco parentis, to establish increased numbers of rules and regulations, formal and informal, designed to assure that the schools operate systematically and effectively. The enlarged responsibility and the growing scope of regulations deemed necessary to assume a meeting of the responsibility has led to a greater need for more effective sanctions upon those pupils who deviate from these regulations. This paper deals with one phase of these sanctions - expulsion from school.

Perhaps the best way to describe the scope of this paper is to first explain what it is not. It is not a complete examination of all the circumstances which could conceivably lead to pupil expulsion. It is not designed to serve as an all inclusive summary of valid and invalid reasons for expelling a pupil. Instead, the paper intends to provide Minnesota school administrators, particularly superintendents, with a guide which might be helpful in dealing with expulsion. The accent will be on those cases of expulsion resulting primarily from discipline problems, typically the most frequent reason for expulsion action by a board of education.

The materials following can in no sense be considered the final word on the matter of expulsion. In some places the author offers his personal opinion on a matter which has been ruled upon in other states but not in Minnesota; in others, where the rule is fairly well established in Minnesota, it is entirely possible that at some future date the rule will be changed.

DEFINITION OF TERMS

The term "expulsion," as used in this paper, is not to be confused with "suspension." It seems proper at this point to differentiate the two terms. When referring to schools, suspension is a "temporary cutting off or debarring one from privileges of an institution or society."[1] Expulsion, on the other hand, means to "eject, banish, or cut off from the privileges of an institution or society permanently."[2] In other words, the distinction between "suspension" and "expulsion" is that the former is a temporary deprivation of rights and benefits, while the latter is a permanent disfranchisement severing the connection between the expelled member and the institution. Permanent means at least for the balance of the school year.

MINNESOTA STATUTES ON EXPULSION

In Minnesota, the power to make reasonable rules and regulations for the conduct of the schools is lodged in the local board of education. Minnesota Statutes Section 123.33, Subd. 7, states that "the board shall superintend and manage the schools of the district; (and) adopt, modify, or repeal rules for their organization, government, and instruction. . ." Within certain limits, pupils may be expelled for violation of these rules.

It must be noted that at no time can a pupil be permanently excluded by anyone other than the board of education. A principal or superintendent who tries to expel a pupil is without the power to do so and will find himself beyond his legal authority if the case is contested in a court of law.

Since it is impossible to anticipate and provide a rule against every possible act of misconduct which might disrupt the order of the schools, it is entirely possible for a pupil to be expelled by the board in the

absence of a specific violated rule. It is usually enough for the school authorities to determine, with adequate evidence, that the presence of the pupil is detrimental to the best interests of the school.

Because under law only a board of education can expel a pupil, it is important that a superintendent or principal act judiciously preceding formal action by the board. Usually, prudence would suggest that a school administrator confronted with a serious rule violation or other serious detrimental action by a pupil suspend the pupil to remove him from school premises until board action can be taken. As pointed out above, the school administrator has the authority to suspend, but not to expel. At an appropriate time the board can then make the final determination as to whether the suspension should remain in effect, be modified, or the pupil expelled.

In many states the statutes explicitly and extensively spell out the numerous reasons pupils may be expelled from school. Minnesota's statutes, on the other hand, are remarkably silent regarding expulsion of pupils from school; in this state there are but two statutes on the subject. The most frequently cited is Minnesota Statutes Section 127.07. It states,

> "Any member of any district who, without sufficient cause or on account of race, color, nationality, or social position, shall vote for, or being present, shall fail to vote against, the exclusion, or suspension from school privileges of any person entitled to admission to the schools of such district, shall forfeit to the party aggrieved $50.00 for each such offense, to be recovered in a civil action." (underlining added)

It can be seen that the above law regulates expulsion by stating to a board member that, in effect, "you may expel, but if done so arbitrarily, you will probably be faced with a civil court action." Court decisions typically

refer to boards and school authorities needing to act in a "reasonable" manner and not in an "arbitrary or capricious" manner.

Also, note should be made of the phrase, "without sufficient cause." Determination of what is "sufficient cause," or what is "reasonable," in the absence of specific statuatory provisions or guidelines, is unquestionably difficult. These words have caused dismay among school administrators and boards of education. Certainly a large percentage of the Attorney General Opinions cited later in this paper were instigated by local school authorities who were uncertain about what constituted "sufficient cause" for expelling a pupil.

The only other statute dealing explicitly with expulsion is Minnesota Statutes Section 127.17 which states, in part,

> "It shall be unlawful for any pupil, registered as such and attending any public elementary, high school, junior college, or vocational school, which is partially or wholly maintained by public funds, to join, become a member of, or solicit any other pupil to...become a member of any secret fraternity or society wholly or partially formed from the membership of pupils attending any such schools...except such societies or associations as are sanctioned by the board of the district concerned."

To enforce provisions of the law, local boards of education are given wide discretion:

> Subd. 2. "The boards shall...have full power and authority to make, adopt, and modify all rules and regulations which...may be necessary for the proper governing of such schools and enforcing all the provisions of this section."

It can be seen from these two statutes that the legislature, while responsible for all public schools in the state, has had little to say about governing the behavior of pupils. Wisely, it has left these matters

to the local district which, however, not infrequently experiences difficulty in determining the reasonableness of a rule.

The very lack of specific provisions cautions school administrators to exercise extreme care in determining whether a pupil should be recommended for expulsion from a public school. A child under 16 years of age is governed by the compulsory attendance law which provides that, with a few exceptions, a pupil must be in school until he is 16 years of age or has completed the tenth grade. Thus, a board should be extremely reluctant to expel a pupil covered by the compulsory education law since experience shows that the courts tend to rule in favor of such a pupil remaining in school. This does not mean that a pupil less than 16 years of age or with less than a tenth grade education cannot be excluded from a local school. It does mean, however, that a district with a youngster deemed unfit to continue in a particular school should work carefully and closely with juvenile authorities to explore the possibility of transferring the pupil to another school or school district or, if the violation is of such a serious nature, to an institution, such as a detention home or boys ranch, or to a foster home in another school district. It is not advocated that a district solve a problem by simply ridding itself of the problem; instead a change of environment for a pupil might provide an opportunity for a desired behavior change.

To expel a pupil over 16 years of age or with a tenth grade education is not as delicate a matter. If a pupil disobeys a reasonable rule of the board, and if the rule is within the jurisdiction of the board to make, the courts will generally uphold the school board. "Whether or not a rule has been violated is ordinarily a matter of fact to be determined by the

school authorities, and unless they abuse their discretion and act arbitrarily and unreasonably, a court will not review their finding of fact."[3]

It should be noted here that, as a method of discipline, expulsion is not used frequently in Minnesota. There are at least several reasons for this. First, there is probably a degree of timidity on the part of school administrators who understandably are fearful of extensive and detailed legal litigation which might result from a pupil expulsion. Secondly, the increased emphasis on education has made educators and school boards aware of the consequences and potential greater damage to a pupil excluded permanently from school before high school graduation. However, because there are cases of expulsion, and an apparent need to expel occasionally, this paper attempts to define the problem and offer some guidelines on the matter.

OPINIONS AND CASES RELATING TO EXPULSION

Basically, there are two general areas in which expulsion may be justified as appropriate action toward a pupil attending a public school. The first area deals with expulsion for offenses committed on school property during school hours. A pertinent example would be the expulsion of a pupil who physically assaults a teacher. There seems to be little doubt that expulsion would be viewed by the Court as a reasonable punishment, depending to some extent upon the prior actions of the teacher.

For less serious offenses, the general rule is that if a pupil consistently and defiantly violates a rule or regulation, expulsion would probably be deemed a proper remedy. For example, it is well established that the state may set up required courses for each pupil in a public

school. A landmark court case in Alabama indicates that a pupil may be suspended or expelled for failure to comply. In 1962, a high school girl refused to participate in a physical education class because, she maintained, the required gym costume was "immodest and sinful" according to her family's religious beliefs. The school, in an effort to reach a compromise, agreed to let the girl wear her own costume and furthermore to allow her to refrain from doing "immodest" exercises. The parents still refused to let her participate. The matter was taken to court and the girl and her parents were overruled. Said the court, "Every precaution has been taken to insure that the course is conducted in a manner consistent with modesty and good taste."[4]

A recent controversy centers around the unusual haircuts worn by high school students contrary to the wishes of school administrators. In most cases, but certainly not in all, the right of the school to regulate the wearing of extreme haircuts, both male and female, has been sustained. The most well-known decision occurred in 1965 in New England. A 17-year-old senior had been told by his principal to cut his long hair. The boy was a good, respectable student who said his image as a "rock and roll" performer would be ruined if his hair was cut. The boy consistently defied the rule and was expelled. His parents charged the rule was arbitrary and unreasonable since it was not connected with successful operation of a public school. The court disagreed. It said the haircut could disrupt a proper classroom atmosphere. "This is not an invasion of the domain reserved exclusively to home and family."[5] However, this judgment may not be uniform. Legal advice attempting to predict possible court action varies. Three suspended members of a musical group contended that their earning power was tied to the Beatle haircuts, and they won reinstatement in the W. W. Samuel High

School, Dallas, Texas, when their agent threatened to sue. A Unionsville, Pennsylvania, long-haired senior honor student who played in a rock and roll band had to settle for education by television.

A second general area in which expulsion may be justified as a punishment, and one in which there is considerably more doubt on the part of school administrators, is the offenses committed by pupils outside the school's jurisdiction. As a prelude to examining a few cases in this area, it can be said, as a general rule, that the school may discipline for offenses committed outside of school hours and not in the presence of the teacher and off school grounds, which have "a direct and immediate tendency to influence the conduct of other pupils while in the school room, to set at naught the proper discipline of the school, to impair the authority of the teachers and to bring them into ridicule and contempt."[6] There are several cases in Minnesota which provide precedence for the above generalization.

SECRET SOCIETIES

As indicated above, citing M.S. 127.17, secret fraternities are strictly forbidden by Minnesota statutes and boards may enact rules and regulations to enforce the law. Occasionally, the question arises as to what constitutes a secret organization. Unfortunately, no clear-cut answer is presented. If an organization refuses to divulge an oath required of members, or if it pledges members to secrecy as to ritual, purposes, activities, or membership, it would seem to be clearly a secret society within the meaning of the law. But what if the organization withholds only the meaning of its name? Is an organization considered secret if it conducts rushing or pledging in the absence of a secret oath? What about the organization which chooses membership solely on the basis of the decision of its members rather than of the

free choice of the eligible pupils? These questions and others have never been definitely answered. Attorney General J. A. A. Burnquist would go only so far as to state in 1944 that while alone these factors and others may not constitute a secret organization, a board should "know all the essential facts and the nature, purpose and activities of the organization whose legality is questioned. Whether an organization (is legal) must be determined by the facts in each case."[7]

In another opinion Burnquist ruled in favor of a district contemplating requiring an endorsement by all high school pupils of a pledge that they did not now belong to nor would they become a member of a secret organization. The opinion was based on an earlier United States Supreme Court decision which sustained a similar oath at the University of Mississippi.[8]

IMMORAL BEHAVIOR

Questions involving suspected moral lapses by pupils pose even greater difficulty. For example, a principal and subsequently the school board had reason to believe a female pupil had committed an act of turpitude outside school jurisdiction. Before taking action against the girl, the board posed two questions to the Minnesota Attorney General: First, "Can we legally expel this girl from school?" Second, "Can her father bring an action against the board of education or against the district for damages?" The Attorney General opined that the board should first determine whether the charges were, indeed, true. If the charge was substantiated, the board should

> "Take into consideration the nature of the offense, the general character of the offending pupil, her present attitude with respect to the conduct complained of and the position taken by the parents of the pupil, whether it is one of conscientious desire to bring about a change

> in the moral makeup of the girl. If after consideration of...all...facts...the board concludes that the good order and discipline of the school will not be disturbed by the presence of the pupil in the school, she should not be expelled. If, on the other hand, the board considers that the good order and discipline will be disturbed, it would be justified in expelling the girl; and in doing so the board would not subject themselves to liability."[9]

The same conclusion was reached six years later when the board of education of Aitkin, Minnesota, expelled a boy because he had illicit relations with a high school girl.[10]

The issue as to what constitutes a disturbance to the good order and discipline of the school took on an added dimension in a case which developed in the 1947-48 school year at the Long Prairie, Minnesota, high school. A student of the school had pleaded guilty to larceny and was granted probation by juvenile court. The boy returned to the school and continued in his classes. According to the board, the boy was looked upon as a "hero" by his fellow students. The principal and school board felt his presence in the school was undesirable because of his experiences and the regard his fellow students had for him because of these "depredations." They inquired of the Minnesota Attorney General as to whether the facts constituted sufficient cause for expulsion.

The Attorney General, J. A. A. Burnquist, issued a lengthy opinion in which he stated that more had to be considered than merely the feelings of fellow students toward the boy.

> "Apparently the court has given him a chance to make good. He should be given that opportunity. To expel him because the other students regard him as a "conquering hero" would be to expel him, not because of what he has done since the beginning of his probation, but because of the attitude and actions of other students. If he goes about boasting of his exploits, we would have one situation. But if he is now trying to make good, we have another.

> "It would appear from the facts before me that the board should not expel the pupil until he has done something since his probation which would justify such action. He is now on trial on his present conduct. If his conduct is good, it would appear that the board would not be justified in dealing with him as though his conduct were bad."[11]

Thus, it appears that in Minnesota a qualification has been added to the general principle that a student can be suspended or expelled if his presence is disturbing to the order of the school. Not only must his presence be disturbing but the pupil must be the direct cause of the disturbances.

S M O K I N G

A perpetual administrative problem relative to pupil discipline surrounds school district regulations on smoking. Prior to 1963 it was a misdemeanor for minor students of any school, college, or university to use any form of tobacco in public. However, the enactment of the 1963 Criminal Code brought about a major revision; present law makes it a misdemeanor for anyone under the age of 18 to use tobacco. It omits students between the ages of 18 and 21 from its provisions. It is interesting to note that the Advisory Committee which recommended the change did so based on the questionable assumption that "the age limit of 18 will cover all students in high school or below." Fortunately, however, the committee said that "there is nothing in the section...which prevents any school from prohibiting the use of tobacco on its premises."[12]

A superintendent of a local school district was apparently concerned that high school pupils over 18 years of age smoking off school premises might adversely affect their younger constituents. The superintendent thus asked the Attorney General if the local board of education could

pass a rule which would prohibit all high school students, regardless of age, from smoking not only in and around the school, but throughout the small community in which the school is located. He further inquired as to whether, if the regulation was within the school board's jurisdiction, the board could expel a pupil for violation.

In an opinion dated April 24, 1967, Attorney General Douglas Head said that a regulation prohibiting students from smoking on school premises is a reasonable rule; violation or repeated violation would be sufficient cause for suspension or expulsion. But to regulate smoking off school premises is a more delicate matter. In the case of a student under the age of 18 who violates the statute or rule of the school board, "the board would have to weigh the effect of the pupil's conduct as it related to the overall welfare of the school. If the pupil's violation constituted a menace to discipline, order, and authority in the school, expulsion or suspension could be considered."

Regarding students over the age of 18 who smoke off the school premises,

> "...It would seem that a rule of the school board prohibiting such activity could be challenged as an unreasonable exercise of the authority to make rules for the government of schools. The effect of such activity by a student 18 years or older upon school discipline would be more remote, because there is no legal prohibition on the activity imposed by the 1963 Criminal Code."[13]

THE MARRIED PUPIL

Until 1929, the right of a married pupil to attend a public school was a tenuous right. In almost all cases a married pupil, male or female, was excluded from school, although some obtained their education through alternate means such as home-bound instruction. In 1929, however, two cases occurred which clearly resolved the question in favor of the right to attend a public school in person. In Kansas it was held that a girl was entitled

to be admitted to high school even though she had given birth to a child conceived out of wedlock, but born in wedlock.[14] In Mississippi, another court said that marriage is a relation highly favored by law, and when the relation is entered into with correct motives, the effect upon the husband and wife is refining and elevating, rather than demoralizing.[15]

In Minnesota, the Attorney General has left no doubt about the status of a married pupil. Early in 1956 a school district adopted a resolution to the effect that married persons were not to be admitted as students in the high school of the district and that no married student could receive a diploma with the regular graduating exercises.

Attorney General Miles Lord opined emphatically that the school board did not act within its authority in adopting such a resolution. Minnesota Statutes, Section 120.06, provides that all schools supported in whole or in part by state school funds are free to all persons between the ages of five and 21 years. In Lord's words,

> "No exception is stated as to married students. It would be just as reasonable to deny to married persons the use of the public library...When we consider that the stability of a republican form of government depends mainly upon the intelligence of the people as declared in the (Minnesota) Constitution, Art. VIII, Sec. 1, how can we say that married people are not included? It is my conclusion that the action of the board in adopting such a resolution was arbitrary and cannot stand."[16]

The situation is not as clear, however, when the married female becomes pregnant. The consensus seems to be that there is little legal justification for expelling a pregnant married pupil. Authorities in many school districts, fearful that the pregnant girl's presence in school will affect morale and discipline, if not morals, offer the girl home-bound instruction. However, whether a district could compel home-bound instruction as a replacement for actual physical attendance in the school has never been settled in

Minnesota. Some districts have requested a pregnant, married female pupil to leave school until the child is born; readmission is routine upon the birth of the child. However, it seems reasonable to assume that a court would probably rule permanent expulsion of a married, pregnant girl as unreasonable.

PREGNANCIES

In the case of an unwed pregnant girl, the guidelines are somewhat more clouded. It is generally held on the basis of the girl's influence on the "good order" of the school, that she could be legitimately requested to leave school.

But what if the girl requests to be readmitted following the birth of her illegitimate child? Perhaps the best rule is one set forth in an Attorney General's opinion in 1938. In this case the controversy centered around the readmission to school of a female who quit school voluntarily because of pregnancy. Her child was born dead. She confessed to the county attorney that she had had sexual relations with other boys and men. The Minnesota Attorney General, when asked for an opinion, said that if the board, acting in good faith, determined that the presence of the girl in the school would endanger the morals of other students and affect the order and discipline of the school, it could refuse to admit her. "In determining whether her presence will endanger the welfare and good morals of the school, the board must be governed largely by the present state of her morals."[17] It should be kept in mind that a school board should not be quick to reject a request by the pregnant girl for home-bound instruction, if such a request is made.

Assuming that a school district has a policy of removing a pregnant girl, whether married or not, from the school premises, and provides home-

bound instruction, there seems to be wide disagreement about timing. The emerging attitude seems to be that held by Knowles:

> "There seems to be no justification for dismissing pregnant girls before the condition is apparent. What educational goal is achieved? An unshowing pregnancy neither embarrasses the prospective mother or her classmates nor endangers the health of the mother-to-be. The real motive behind dismissal regulations seems to be a fear that pregnancies will become popular with other students if they are condoned within the school walls. This reason is often couched in terms of protection of school morale and discipline."[18]

In contrast to this opinion, the state of Ohio has ruled that, despite a compulsory attendance law, a pregnant, married pupil could be dismissed immediately upon knowledge of pregnancy. The Court even went so far as to uphold a local board regulation which stated that school officials could demand a doctors examination in cases of question. In sustaining the regulation, the Ohio Court relied upon a single statutory exception in the compulsory attendance law which stated that a child may be excluded from a public school if "his bodily or mental condition does not permit his attendance at school during such period."[19]

While on the subject of married pupils, note should be made about the participation of married pupils in extra-curricular activities. In 1962 a Minnesota school district had passed a number of rules governing participation in extra-curricular activities. One such regulation said that:

> "Married students are not to participate in extra-curricular activities which take place, in larger part, after the close of the regular school day. This is in accordance with school board policy which takes the view that a married student has assumed family obligations which are his or her first responsibility."

As a result of the ruling, a married student was refused the right to participate in high school baseball. The Attorney General ruled that:

> "It would seem to us that it would be difficult to sustain a regulation as reasonable which denied to a student the right to play on the baseball team...on the sole ground that he was a married student...We do not mean to imply that the board has not the power to make a reasonable rule restricting the participation of married students in extra-curricular where the facts are such that, in the judgment of the school board, injury will be caused to the school or participating students. But the fact of marriage alone is not sufficient, in our opinion, to restrict participation."[20]

RIGHT OF A PUPIL TO A HEARING

A recent development related to expulsion is the problem of whether a pupil under consideration for expulsion is entitled to a hearing before he may be expelled. If the question is answered in the affirmative, as it usually is, then further inquiry would be concerned with the type of hearing which should be held. In other words, if the hearing is required, may the educator simply hold an informal office conference with the student, or is the student entitled to a full-dress judicial hearing?

The general rule has been that some kind of hearing should be held to determine whether a student should be expelled, but that cross-examination and face-to-face confrontation are superfluous to the basic protection of "due process" in the expulsion situation.[21] However, there are signs that this rule is being modified. The latest and most notable development occurred on May 15, 1967, In the Matter of Gault (87 Sup. Ct. 1428). The Supreme Court of Arizona had rejected a juvenile's claim that due process was denied because, among other things, he was denied the right of counsel and the right to confront and cross-examine witnesses at a juvenile court hearing. The U.S. Supreme Court held:

> "The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into facts, to insist upon regularity of proceedings, and to ascertain

> whether he has a defense and to prepare to submit it. The child requires the guiding hand of counsel at every step in the proceedings against him."

The Court's decision prompted Reynolds C. Seitz, former dean of the Marquette University Law School, to comment that "it is likely to have an impact in the school field on proceedings relative to expulsion..."[22] Seitz also wrote:

> "The most interesting question as to the future extension of the doctrine of Gault giving the right to an attorney and to confront and cross-examine witnesses seems to be whether the student facing expulsion shall be given the right to confront his accusers if they are also juveniles. (In Gault the witness against the juvenile was an adult.) There seems to be no reason why the accused juvenile should not be given the right to counsel but there may be good reason why juveniles should not be subjected to the ordeal of being confronted and cross-examined by the attorney for the accused. The reason against this may become more impelling as the age of the child sought to be confronted and cross-examined becomes lower...
>
> "If we conclude, as I believe we will have to, ... that the risk of damage of putting them through the ordeal of cross-examination and confrontation is too great, what procedure can we substitute to insure that the accused will get due process? Certainly the assuced should have the right to cross-examine the school officials who took testimony from juvenile witnesses that has been used to support the case of expulsion and perhaps in the case of suspension. This cross-examination would be aimed at such matters as determining the procedure used by the school official, the reasons why he concluded as he did, whether it was feasible for him to corroborate the evidence given to him and if it was, whether he did so...
>
> "...In April, 1967, the United District Court for Southern New York in Madera V. Board of Education, 267 F. Supp. 356, faced up...to the kind of question that has been presented in this comment. Its attitude may very well continue to be the rule. The case involved an expulsion issue. The Court, after stating that "fundamental fairness dictates that a student cannot be expelled from a public educational institution without notice and hearing" and without being accorded a right to an attorney, went on to say, "This does not mean that there must be a full judicial style hearing with cross-examination of child witnesses (emphasis added) and strict application of the rules of evidence."[23]

S U M M A R Y

Although stating universally applicable rules concerning pupil expulsion is difficult and risky, it seems safe to say that a school district superintendent in Minnesota should be familiar with the following guidelines:

1. Rules and regulations are necessary to regulate the behavior of the majority of pupils in school. Expulsion for violation of the rules is a power conferred only to the board of education.
2. Rules or regulations affecting student behavior within the school's jurisdiction, which are reasonable and not arbitrary, will usually be upheld by the courts. Courts seem to prefer to leave operation of the schools to the educators, acting for the boards of education, whenever possible.
3. Rules and regulations which affect the behavior of pupils outside the school's official jurisdiction will usually be upheld if the student violation tends to bring ridicule or contempt upon the school, or disrupt its usual routines.
4. The procedures used by school officials in enforcing the rules and regulations is important. Any unreasonable procedures are apt to affect the court's attitude. Specifically, a board should give serious consideration to conducting a hearing prior to expelling a pupil.
5. It is not legal to expel or in any other way dismiss a married pupil from a Minnesota public school. Additionally, extreme caution should be exercised in any attempt to dismiss a pregnant, married pupil. A reasonable rule which discontinues attendance after a reasonable number of months and provides home-bound instruction will usually be sustained.

6. In the case of an unwed pregnant pupil, especially one under 16 years of age, the district should make every effort to provide education for the pupil, if she so wishes. Home-bound instruction is usually the best solution.

FOOTNOTES

1. Words and Phrases, Volume 40. St. Paul: West Publishing Company. p. 572.

2. Ibid., Volume 15A, p. 593.

3. For an excellent appraisal of this matter, see MEA-NOLPE Bulletin entitled, "Legal Approach to Dealing with Disciplinary and Juvenile Delinquency Problems in the Schools."

4. Newton Edwards, The Courts and the Public Schools, (Chicago: University of Chicago Press, 1955), p. 601.

5. Mitchell v. McCall, 143 So. 2d 629 (1962).

6. Leonard v. School Committee of Attleboro, 212 NE 2d 468 (1965).

7. Minnesota Attorney General's Opinion, April 11, 1919.

8. Minnesota Attorney General's Opinion, February 4, 1944.

9. Minnesota Attorney General's Opinion, July 9, 1945.

10. Minnesota Attorney General's Opinion, April 12, 1921.

11. Minnesota Attorney General's Opinion, May 31, 1927.

12. Minnesota Attorney General's Opinion, December 15, 1948.

13. Minnesota Attorney General's Opinion, April 24, 1967.

14. Loc. cit.

15. Nutt v. Board of Education of City of Goodard, 278 P. 1065 (1929).

16. McLeod v. State ex. rel. Colmer, 122 So. 737 (1929).

17. Minnesota Attorney General's Opinion, May 1, 1956.

18. Minnesota Attorney General's Opinion, February 10, 1938.

19. Laurence W. Knowles, "What Schools Do About Student Marriages," Nations Schools, 77 (April, 1966), p. 63.

20. State of Ohio ex. rel. Idle v. Chamberlain, 175 N.E. 2d 539 (1929).

21. Minnesota Attorney General's Opinion, April 26, 1962.

22. Reynolds C. Seitz, "Editorial," NOLPE Newsletter, 7 (September, 1967), p. 1.

23. Reynolds C. Seitz, "Editorial," NOLPE Newsletter, 7 (November, 1967), p. 1.

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